IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 724 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDLODIA GRAM PANCHAYAT

Versus

STATE OF GUJARAT & Ors.

Appearance:

1. Special Civil Application No. 724 of 1989

NOTICE SERVED for Petitioner

MR AJ DESAI, AGP, for Respondent Nos. 1 & 2

RULE SERVED for Respondent No.3

NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 08/04/2003

ORAL JUDGEMENT

By filing instant petition under Articles 226 & 227 of the Constitution, Chandlodia Gram Panchayat has prayed to issue a writ of mandamus or a writ of certiorari or any other appropriate writ or direction to quash order dated October 27, 1988 passed by the Additional Development Commissioner, in Revision Application No.98 of 1988, by which Resolution No.54 passed at the general meeting of the Gram Panchayat, which was held on November 23, 1987, resolving that new assessment list be prepared to revise the rates of house-tax, determined by the Gram Panchayat, is set aside.

2. The petitioner is a Panchayat constituted and established under the provisions of the Gujarat Panchayats Act, 1961 ("The Act" for short). On November 23, 1987, a general meeting of the Gram Panchayat was held under the presidentship of the Sarpanch. In the said meeting, Resolution No.54 was passed resolving that since four years were complete after assessment of house-tax of Gram Panchayat, a new assessment list be prepared to revise the rates of the house-tax. A copy of the said Resolution is produced by the petitioner at Annexure-A to the petition. Pursuant to the above-referred to Resolution, a notice was published in Gujarat Samachar Daily dated December 4, 1987 and objections were invited. The objections were to be filed on or before January 15, 1988. Pursuant to the said notice, a number of objections including the objections by respondent No.4 were filed. On February 18, 1988, a general meeting of the Gram Panchayat was held under the presidentship of the Sarpanch in the office of the Panchayat, and after considering the objections of all the objectors as well as hearing the objectors who had remained personally present, Resolution No.84 was passed by which it was decided to levy house-tax at the rates mentioned in the said Resolution. By Resolution No.84 it was decided that house-tax at the rate of Rs.50/-per sq.mt. instead of old rate of Rs.100/-per sq.mt. should be levied for kachcha construction, whereas house-tax at the rate of Rs.200/-per sq.mt.instead of Rs.300/-per sq.mt. should be levied for construction made of bricks, and house-tax at the rate of Rs.400/-per sq.mt. instead of Rs.500/-per sq.mt. should be levied with regard to R.C.C.pacca construction. A copy of Resolution No.84 is produced by the petitioner at Annexure-B to the petition.

3. The respondent No.4 approached District Panchayat i.e. respondent No.3 by way of filing an appeal under Section 290 of the Act and challenged Resolution No.54, dated November 23, 1988. The appeal was dismissed by the

Appellate Committee of the District Panchayat vide order dated May 10, 1988, which is produced at Annexure-C to the petition. Feeling aggrieved, respondent No.1 preferred Revision Application No.98 of 1988 before the Additional Development Commissioner,Gandhinagar i.e. respondent No.2, who has allowed the same and set aside Resolution No.54 dated November 23, 1987 by his order dated October 27, 1988, giving rise to instant petition.

4. On elevation of the learned advocate of the petitioner on Bench, a notice was issued to the petitioner calling upon it to make necessary arrangement for its appearance either through an authorized officer or through a lawyer. However, in spite of service of notice, the petitioner has neither appeared through its authorized officer nor through a lawyer. Similarly, Mr.V.S.Mehta, learned advocate engaged by respondent No.4, expired during pendency of the petition and, therefore, a notice was issued to the respondent No.4 calling upon him to make necessary arrangement for his appearance either in person or through a lawyer, but in spite of due service of notice, the respondent No.4 has neither appeared in person nor through a lawyer. It may be mentioned that this is a very old matter i.e. of the year 1989 and is notified for final hearing on 46 occasions. Under the circumstances, the petition is taken up for final disposal on merits with the assistance of Mr.A.J.Desai, learned Assistant Government Pleader, who appears on behalf of respondent Nos.1 & 2.

5. The petition was placed for admission hearing before the learned Single Judge of this Court on March 5, 1990 and after hearing the learned advocate of the petitioner, following order was passed :-

> "Rule. Learned counsel Mr.V.S.Mehta, waives service of rule on behalf of respondent No.4.
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> Heard the learned counsels appearing for the parties with regard to interim relief. Interim relief in terms of Para 23(b).
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> In the facts of the case, it is further directed that whatever amount respondent No.4 may be required to pay pursuant to the property tax bill that may be issued by the petitioner-Panchayat, it shall be subject to the result of the petition. In case if the petitioner fails in the petition and it is held that the amount of property tax recovered from respondent No.4 is illegal and void, the petitioner shall refund the

amount to respondent No.4 within a period of one month from the date of the decision by this Court. The petitioner shall file an undertaking to that effect in this High Court within a period of fifteen days from today."

6. The Court has taken into consideration the points raised in the petition and the documents forming part of the petition. The contention that the appeal filed by respondent No.4 against Resolution No.54, dated November 23, 1987 was not maintainable, inasmuch as final decision was to be taken after hearing objections and final decision, in fact, was taken by passing Resolution No.84 on February 18, 1988 and, therefore, the impugned order passed by the Additional Development Commissioner should be set aside, is devoid of merits. The reading of two resolutions makes it manifest that flat rate of tax on buildings is adopted by the petitioner.In exercise of powers conferred by Section 323 of the Gujarat Panchayats Act, 1961, the Government of Gujarat has made Rules called "The Gujarat Gram and Nagar Panchayats Taxes and Fees Rules, 1964". Rule-7 of the said Rules, inter alia, provides that the rate of tax, which a Panchayat may determine on buildings and lands, shall be such as may be fixed by it either on the capital value or on the annual letting value of the building or the land, but not below the minimum and not exceeding the maximum rates specified in the Schedule annexed to Part-II of the Rules.

A bare reading of the above quoted rule makes it abundantly clear that the rate of tax has to be determined with reference to the capital value or the annual letting value of the building. The prescription of flat rate of tax is not envisaged by Rule-7 of the Rules. It is true that Resolution No.54 was tentative in nature, but in the said Resolution also flat rate of tax was suggested which was approved after taking into consideration the objections, by passing Resolution No.84 dated February 18, 1988. Though the Panchayat possesses power of revision of assessment after four years, the power cannot be exercised contrary to statutory prescription. If the technical plea viz. any person aggrieved by the assessment levied or imposition of any tax or fees, may appeal to the District Panchayat within the prescribed period and that appeal cannot be entertained, unless the amount claimed from the appellant has been deposited by the appellant with the Panchayat, is accepted, the effect would be to revive illegality committed by the petitioner-Panchayat, which cannot be done while exercising powers under Article 226 of the Constitution. The grant of reliefs claimed in the

petition would amount to permitting the petitioner to disobey the statute under which it has power to determine the rate of tax. Such is not the ambit and scope of powers under Article 226 of the Constitution. In Karnataka State Road Transport Corporation v. Ashrafulla Khan & Ors. (2002)2 SCC 560, the Supreme Court has ruled that under Article 226 of the Constitution, High Court is required to enforce the rule of law and it cannot pass an order or direction contrary to what has been injucted by law. If the relief as prayed for in the petition is granted, the petitioner will be permitted to perpetuate the illegality committed by it in determining flat rate of tax which is not contemplated by Rule-7 of the Rules. Therefore, the petition cannot be accepted and is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. Consequently it is held that the amount of property tax recovered from the respondent No.4 is illegal and void. There shall be no order as to costs. Interim relief granted earlier by order dated March 5, 1990 is hereby vacated. The petitioner-Panchayat is directed to take appropriate action as mentioned in the undertaking filed on oath on March 16, 1990 by Mr.Babubhai R.Patel, the then Sarpanch of the petitioner-Panchayat.

(J.M.Panchal,J.)

(patel)